IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1184 OF 2005

Ms. Surekha Gauridhar Jangam ...Petitioner
Vs.
The State of Maharashtra ...Respondent

Ms Surekha Gauridhar Jangam, Petitioner in person.
Shri. K. V. Saste, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 21, 2005.

P.C.:

1. Heard Petitioner in person. The Petitioner is being prosecuted for the offences punishable under section 110, 112 read with section 117 of the Bombay Police Act, 1951. The Petitioner made Application under section 311 of the Code of Criminal Procedure, 1973 for recalling P.W.1 Rajendra Mahale. The recall is sought on the ground that due to oversight, the Advocate for the Petitioner could not give a suggestion to the said witness that the Petitioner was illegally arrested in connection with commission of an alleged non-cognizable offence. The second ground on which recall is sought is that the P.W.No.1 Mahale is in the habit of filing false cases and therefore, one Shri. Salunkhe has filed a complaint of defamation against the P.W.No.1. The Application for recall was rejected by the learned Magistrate. The learned Magistrate observed that the Petitioner can always place on record certified copy of the defamation case filed by one Shri. Salunkhe against the P.W.No.1. The learned Magistrate also observed that full opportunity was granted to the Petitioner to

cross-examine the witness and the witness cannot be recalled for filling up the lacuna. The Revision Application filed by the Applicant before the Sessions Court has been rejected.

2. The Petitioner appearing in person has placed reliance on the decision of the Apex Court reported in the A.I.R. 1999, Supreme Court 2292(Rajendra Prasad V. Narcotic Cell) and submitted that the Apex Court has held that re-examination of prosecution witnesses cannot be permitted for filling up the lacuna in prosecution evidence. However, the Apex Court has held that mistakes or latches in conducting the case by Public Prosecutor cannot be considered to be a lacuna in the prosecution case and in such cases power under section 311 of the Code of Criminal Procedure, 1973 will have to be exercised.

3. The Petitioner appearing in person also submitted that the panchnama dated 11th May, 1996 is placed on record by the prosecution which itself shows that the Petitoner was arrested and the panchnama is nothing but the arrest panchnama. The Petitioner, therefore, submitted that a case for exercising power under section 311 of the said Code of 1973 was made out.

4. I have considered the submissions. The Petitioner is being prosecuted for the offence punishable under

section 110, 112 read with section 117 of the Bombay Police Act. The P.W.1 has stated in his examination-in-chief that the Petitioner was taken to Police Chowki by him and N.C. was lodged under his signature. It is difficult to understand what is relevance of the alleged arrest of the Petitioner in the present prosecution. In any event, according to the case of the Petitioner, the prosecution has placed on record alleged arrest panchnama. Since the panchnama is a document produced by the prosecution, the Petitioner can always rely upon said panchnama and hence, on the first ground it is not possible to recall P.W.1 Shri. Mahale.

5. So far as the complaint filed by Shri. Salunkhe against the P.W.1 is concerned, the courts below have already observed that the Petitioner can always place on record certified copy of the complaint. I find no fault with the reasons given by both courts for coming to the conclusions that no case is made out for exercising of powers under section 311 of the said Code of 1973. Hence, there is no merit in the Petition and the Petition is dismissed.

JUDGE